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Application No. 10/700,929
Reply to Office Action dated May 4, 2005
Docket: 21295.70(H5704US)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re:	Martin Hoppe et al.	Patent Application Confirmation No: 5952
Serial No:	10/700,929	Group: 2878
Filed:	November 4, 2003	Examiner: Pyo, Kevin K.
For:	Method and Apparatus for Investigating Layers of Tissues in Living Animals Using a Microscope	

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being faxed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 at 703-872-9306:

By: Maria Eliseeva — July 5, 2005
Maria Eliseeva — Date

RESPONSE TO RESTRICTION REQUIREMENT

VIA FACSIMILE 703-872-9306
Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Restriction requirement mailed on May 4, 2005, Applicant elects Claims 1-8 and 14-16. Applicant respectfully traverses on several grounds, including the one that no new search will be required for searching all groups of claims and that no undue burden will be imposed on the Patent Office.

Applicant also respectfully traverses the grounds of the present restriction requirement and wishes to place the application in better condition to appeal the restriction requirement.

The Examiner has stated:

> "The inventions are distinct, each from the other because of the following reasons: [...]
>
> Because these inventions are distinct for the reasons given above abnd have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper."

What 35 U.S.C. 121, the law, states in relevant part is: "If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions." Note that 37 C.F.R. §§ 1.141 and 1.142 also speak of "independent and distinct" inventions. The Patent Office has only argued that the inventions are distinct. The Patent Office has not